

OPINION

Food liability bill - Another GOP 'bait and switch'

BY REP. JOHN CONYERS JR.

Lost in the hue and cry over the House passage of the ill-named "Personal Responsibility in Food Consumption Act" is recognition that the bill is simply one more deception designed by the Republicans to shield their corporate sponsors from liability for wrongdoing. A recent study published in *The New England Journal of Medicine* found that obesity is about to pass smoking as the leading cause of preventable death in this country — a real crisis-and the answer of this leadership is this legislation? Ridiculous. If it were a product, the bill would constitute nothing less than an unfair and deceptive trade practice.

I say this because the legislation would ban not only the small handful of private suits brought against the food industry — all of which have thus far been dismissed by the courts anyway — but also those suits that would hold food producers accountable for negligent and reckless actions — even those actions that violate state and federal law. For example, the legislation would protect companies that permit incorrect ingredient or fat content information to appear on food products, thereby contributing to the range of dangerous conditions, including heart disease and diabetes, itemized in the recent groundbreaking study.

This is not a mere hypothetical concern. In 2001, two dieters filed a class action suit under Florida's Unfair Trade and Deceptive Practices Act, arguing they were misled by DeConna's "Big Daddy Reduced Fat Ice Cream," which, in fact, had three times more fat and calories than the label claimed. This past September, DeConna settled the case and agreed to periodically verify the

accuracy of its labeling information. The plaintiffs received no financial windfall; they were merely reimbursed for the money they had expended. Had the Republican obesity liability bill been law in 2001, the action would likely have been barred.

This legislation goes so far as to ban suits for harm caused by dangerous nutritional supplements that have nothing to do with excess food consumption. This massive loophole, set forth in the finest of fine print, would prevent any legal action relating to "any health condition that is associated with a person's weight gain or obesity" stemming from consumption of a "qualified food product," a term which in turn is defined to include nutritional supplements. There is no requirement whatsoever that the person actually gained weight as a result of

consuming the product. As a result, the bill would prevent persons who develop heart disease and diabetes from nutritional supplements such as ephedra and phen phen from being able to obtain legal redress.

Advertised as a crackdown on "frivolous" private lawsuits, this bill would crack down on suits that are not frivolous at all. Even worse, it would ban these lawsuits on a retroactive basis. Dozens of nutritional supplement cases currently pending in court would be thrown out, including the suit by Kiley Bechler relating to the death of her husband, former Baltimore Orioles pitcher Steve Bechler, after ingesting the ephedra-based product Xenadrine-RFA; and the

suit by Earline Cook, whose husband, a decorated military veteran, died using another ephedra-based product while playing basketball on a military base. These are just two of approximately 60 pending cases relating to death or injury from these products.

There is more. The obesity bill would also prevent state law enforcement officials from enforcing their own laws. Attorneys general in the fifty states would be prevented from pursuing actions against the food industry for deceptive practices and false advertising. Of course, none of the propaganda spouted in support of this legislation mentions this little feature.

I wish I could say that this "bait and switch" tactic was an aberration, but it is not. It is standard practice from this Republican leadership. The GOP medical malpractice bill purports to protect physicians from malpractice suits, but it also conveniently insulates pharmaceutical companies from wrongdoing. The class action bill is not limited to class action procedures, but also applies to civil rights, mass tort, and private attorney general actions.

The Homeland Security bill included a rider to protect drug companies from actions by vaccine-injured mercury-toxic children, and the ill-fated Energy bill included an unrelated provision immunizing gasoline companies for environmental and health hazards caused by their use of fuel additives.

The next time Republicans argue that we need more accountability in our legal system, I would advise them to first provide for accountability in their own legislation. At the very least, they ought to label their liability bills for what they are — special interest vehicles which reward their friends, punish their foes, and disrupt thousands of legitimate legal cases brought by harmed victims of negligence.